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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911
20999	7590	05/31/2007	EXAMINER	
FROMMERM LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			PIZIALI, ANDREW T	
		ART UNIT	PAPER NUMBER	
		1771		
		MAIL DATE	DELIVERY MODE	
		05/31/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/730,459	LEVINE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew T. Piziali	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 April 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,9-12,24,28 and 29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4,6-8,13,14,23,25-27 and 30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 6/14/04 & 3/23/06 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 4/19/2007 has been entered.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 2, 4, 6-8, 13, 14, 23, 25-27 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention does not fall within one of the four categories of patent eligible subject matter recited in 35 USC 101. It is noted that the applicant elected product claims in the election made on 10/21/2005.

Regarding claims 1, 2, 4, 6-8, 13 and 14, the claims are directed to neither a "product" nor an "apparatus," but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See for example MPEP 2173.05(p).

Regarding claims 23, 25-27 and 30, the claims are directed to neither a "product," a "process," nor an "apparatus," but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See for example MPEP 2173.05(p).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2, 4, 6-8, 13, 14, 23, 25-27 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 2, 4, 6-8, 13, 14, 23, 25-27 and 30, it is unclear if the applicant is claiming a product or an apparatus.

Regarding claims 23, 25-27 and 30, it is unclear if the applicant is claiming a product, a process, or an apparatus.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,110,905 to Rhodes in view of USPN 6,060,145 to Smith.

Regarding claims 1, 2, 4, 6, 23 and 25-27, Rhodes discloses a tufted fabric comprising flat filaments (see entire document including column 1, line 71 through column 2, line 50). Rhodes does not specifically mention using the fabric as a supporting fabric, to form a hydroentangled nonwoven product, but it appears that the fabric is capable of being used as claimed.

Rhodes does not appear to specifically mention a hydroentangling device in combination with the tufted fabric, but Smith does disclose that it is known in the tufted fabric art to include a hydroentangled nonwoven secondary carpet backing material for a plurality of reasons including increased delamination strength and increased dimensional stability (see entire document including column 5, lines 3-59, column 8, line 45 through column 9, line 47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the tufted fabric of Rhodes with a hydroentangling device, because the hydroentangling device would produce the desired secondary backing material, which would result in a tufted fabric with increased delamination strength and increased dimensional stability.

Regarding claims 2 and 4, Rhodes discloses that at least one direction (CD or MD) of filaments may include non-flat filaments (51) (see Figure 1).

Regarding claim 6, Rhodes discloses that the flat filaments may include a combination of the MD and CD filaments (column 1, line 71 through column 2, line 50).

Regarding claims 23 and 25-27, Rhodes discloses that the flattened filaments may be spun, extruded, or shaped into a flattened or rectangular shape (column 2, lines 33-50) and then woven (column 2, lines 14-16). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir.

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1985). The burden has been shifted to the applicant to show obvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,110,905 to Rhodes in view of USPN 6,060,145 to Smith as applied to claims 1, 2, 4, 6, 23 and 25-27 above, and further in view of anyone of USPN 5,465,761 to Gheysen or USPN 6,457,489 to Smissaert.

Rhodes does not appear to mention the use of a multilayer tufted fabric weave, but Gheysen and Smissaert each disclose that it is known in the tufted fabric art to use multilayer tufted fabric weaves (see entire document including column 1, lines 4-30 of Gheysen and column 1, lines 4-13 of Smissaert). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the weave in any suitable weave construction, such as a multilayer weave, because it is within the general skill of a worker in the art to select a known weave on the basis of its suitability and desired characteristics.

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9. Claims 1, 6, 13, 14, 23, 25-27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of USPN 4,345,730 to Leuvelink.

Regarding claims 1, 6, 13, 14, 23, 25-27 and 30, Greenway discloses hydroentangling devices in combination with conveyor belts (see entire document including column 4, lines 33-46), but Greenway does not mention specific conveyor belt materials. Greenway is silent with regards to specific conveyor belt materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional conveyor belt materials. Leuvelink provides this conventional teaching showing that it is known in the conveyor belt art to use a fabric comprising flat filaments (see entire document including column 4, line 63 through column 5, line 23). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the conveyor belts from the flat filament fabric of Leuvelink, motivated by the expectation of successfully practicing the invention of Greenway.

Although Leuvelink does not appear to specifically mention using the fabric as a supporting fabric, to form a nonwoven product and thereafter removing the nonwoven product from the supporting fabric, it appears that the fabric is capable of being used as claimed.

Regarding claim 6, Leuvelink discloses that the flat filaments may include a combination of the MD and CD filaments (column 5, lines 19-23 and Figure 7).

Regarding claim 13, Leuvelink does not specifically mention the permeability of the fabric, but considering that the fabric disclosed by Leuvelink is substantially identical to the claimed fabric (spiral link fabric comprising flat filaments), and considering that the applicant discloses that such a fabric inherently possesses the claimed permeability (see page 11, lines 8

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and 9 of the current specification), it appears that the fabric inherently possesses the claimed permeability.

Regarding claims 14 and 30, Leuvelink discloses that the fabric may be a spiral link type fabric (see Figure 7).

Regarding claims 23 and 25-27, Leuvelink does not specifically mention how or when in the process the filaments are flattened, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

#### ***Response to Arguments***

10. Applicant's arguments filed 4/19/2007 have been fully considered but they are not persuasive.

The applicant asserts that there is no teaching or suggestion in either Rhodes or Smith for the use of the support fabric in a hydroentangling device. The examiner contends that the claims do not require the use of the support fabric in a hydroentangling device. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant asserts that the instant invention is not directed to a tufted fabric or a carpet, but a support fabric comprising flat yarns for use in a hydroentangling device. The examiner contends that regardless of the title given to the invention disclosed by the applied prior art, the structure taught by the applied prior art is identical to the claimed structure. Regarding the intended use, a recitation of the intended use of the claimed invention must result

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in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The applicant asserts that Greenway does not use conveyor belts for the hydroentangling process and therefore the combination of Greenway and Leuvelink fails to teach or suggest a fabric for use in a hydroentangling process. The examiner respectfully disagrees. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The applicant asserts that there is no motivation to combine the teachings of Greenway and Leuvelink because Greenway does not specifically require the belt to possess flat filaments. The examiner respectfully disagrees. Greenway discloses hydroentangling devices in combination with conveyor belts (see entire document including column 4, lines 33-46), but Greenway does not mention specific conveyor belt materials. Greenway is silent with regards to specific conveyor belt materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional conveyor belt materials. Leuvelink provides this conventional teaching showing that it is known in the conveyor belt art to use a fabric comprising flattened filaments (see entire document including column 4, line 63 through column 5, line 23). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the conveyor belts from the flattened filament fabric of Leuvelink, motivated by the expectation of successfully practicing the invention of Greenway.

***Conclusion***

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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atp

ANDREW PIZIALI  
PRIMARY EXAMINER